

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: S. L. Baumeier Company, LLC	ADMINISTRATIVE CONSENT ORDER NO. 2015-AQ-01 NO. 2015-SW-01
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TO: S.L. Baumeier Company, LLC
Mark Lamer, Registered Agent
1252 Highway 96
Gladbrook, Iowa 50635

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and S.L. Baumeier Company, LLC, for the purpose of resolving the illegal dumping and burning of solid waste. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bryan Bunton
Iowa Department of Natural Resources
Field Office No. 5
7900 Hickman Road, Suite 200
Windsor Heights, Iowa 50324-4432
Phone: 515-725-0268

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324-4432
Phone: 515-725-9551

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1), which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the

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rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. A large pile of construction and demolition waste was deposited at the corner of 250th Street and B Avenue in a rural area north of Le Grand, Marshall County, Iowa. The construction and demolition waste was subsequently burned. The materials were originally a residence in Marshalltown, and were brought to the burn site by the S.L. Baumeier Company, LLC.

2. On May 2, 2014, DNR Field Office No. 5 received an anonymous complaint that a large pile of construction and demolition waste had been deposited at the corner of 250th Street and B Avenue, north of LeGrand, Marshall County, Iowa. The complainant stated that the materials had been burned.

3. In response to the complaint, Tama County Sanitarian Todd Apfel investigated the burn site on May 2, 2014. Mr. Apfel took photographs of the smoldering debris at the site.

4. Bryan Bunton of DNR Field Office No. 5 visited the site on May 14, 2014. While at the site, Mr. Bunton observed the debris and took photographs of the charred remains. Also while at the site, Mr. Bunton spoke with Leon Lamer, who stated that he is the property owner. Mr. Lamer stated that the construction and demolition wastes originated as a residence in Marshalltown, and were brought to his property by the S.L. Baumeier Company, LLC, and disposed of in an effort to avoid costly landfill fees.

5. On May 21, 2014, DNR Field Office No. 5 issued a Notice of Violation letter (NOV) to S.L. Baumeier Company, LLC. The NOV required the company to remove and properly dispose of all solid waste at the site no later than June 13, 2014. The NOV also required that all landfill receipts documenting proper disposal be submitted to DNR Field Office No. 5 by no later than June 20, 2014.

6. On June 16, 2014, DNR Field Office No. 5 received a response from S.L. Baumeier Company, LLC, stating that the solid waste had been removed from the burn site. Landfill receipts dated June 3, 2014, and totaling \$1,966.80 also were received.

7. On July 7, 2014, Bryan Bunton and Anthony Bigger of DNR Field Office No. 5 visited the site and observed that all solid waste had been removed.

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8. S.L. Baumeier Company, LLC, has a history of similar violations. On June 13, 2011, DNR Field Office No. 5 issued an NOV to the company concerning a large pile of debris improperly dumped at 1252 Highway 96, Gladbrook, Iowa. Enclosed with the NOV were copies of Iowa's open burning and solid waste disposal regulations. On June 29, 2011, S.L. Baumeier Company, LLC, submitted landfill receipts documenting proper disposal. Also on June 29, 2011, DNR Field Office No. 5 investigated the site and confirmed that all solid waste and burn debris had been removed.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of demolition waste is specifically prohibited. The illegal open burning of solid waste in this case demonstrates a violation of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The illegal open dumping of solid waste in this case demonstrates non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders S.L. Baumeier Company, LLC, agrees to do the following:

1. S.L. Baumeier Company, LLC, shall pay a penalty of \$5,000.00 within 30 days of the date this order is signed by the Director; and

2. S.L. Baumeier Company, LLC, shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at any

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location in the State of Iowa, and shall comply in the future with the regulations concerning disposal of solid waste and open burning.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the type of solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$5,000.00 penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – S.L. Baumeier Company, LLC, received economic benefit from the illegal open dumping and illegal open burning that occurred in this case. These actions allowed the company to postpone paying landfill tipping fees until a later date, and to use the funds for some other economic purpose. In this case, the company was able to completely avoid landfill fees for the portion of the residence that was consumed in the fire. Tipping fees at the Marshall County Landfill are \$55.00 per ton. Therefore, DNR estimates that at least \$2,000.00 in economic benefit accrued, and for that reason \$2,000.00 is assessed for economic benefit.

Gravity of the Violation – The open burning of solid waste can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Illegal open dumping and illegal open burning threaten the integrity of DNR's environmental programs and efforts to protect the state's valuable natural resources, including groundwater. In addition, S.L. Baumeier Company, LLC, was able to underbid contractors who properly dispose of waste, which undermines environmental protection regulations. Therefore, \$1,000.00 is assessed for the gravity of the violations.

Culpability – S.L. Baumeier Company, LLC, has intentionally and knowingly conducted the open dumping and open burning of prohibited wastes. S.L. Baumeier Company, LLC, has been cited in the past for illegal disposal of solid

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waste and illegal open burning. Therefore, S.L. Baumeier Company, LLC, displays a certain degree of negligence in this case. Further, S.L. Baumeier Company, LLC, is responsible to be knowledgeable of the DNR's requirements, and to be alert to the probability that its conduct is subject to DNR's rules. For the above reasons \$2,000.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of S.L. Baumeier Company, LLC. For that reason, S.L. Baumeier Company, LLC, waives its right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

Chuck Gipp
Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 6th day of
December, 2015.
January

Mark Vane
S.L. Baumeier Company, LLC

Dated this 9 day of
Dec, 2014

DNR Field Office 5; Anne Preziosi; VII.C.2